HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 17073 OF 2003

DATED: 23.1.2006

Between:

S.K. Jaffar

… Petitioner

and

Andhra Pradesh Power Generation

Corporation Limited and another

… Respondents

ORAL ORDER:

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Writ Petitioner challenges the initiation and continuation of a departmental enquiry *qua* the charge memo bearing No.DE/TRG & SAFETY/Enq/No.1/CD.No.1/2003 dated 23.1.2003.

Earlier the petitioner was placed under suspension by proceedings dated 9.1.2003 on the ground that he was imprisoned pursuant to involvement in a criminal

case in Cr.No.187/2002 on the file of the I Town Police Station, Godavarikhani, in respect of an offence punishable, under Section 4 of the Dowry Prohibition Act. It appears that the complaint was made by the wife of the petitioner.

Sri K. Venkata Rao, learned counsel for the petitioner, states that subsequently the matter was settled in the Lok Adalat, the prosecution was dropped and the petitioner was acquitted by the criminal court. The writ petition is filed on the premise that criminal prosecution and a departmental enquiry cannot simultaneously be pursued and it is contended that since the basis of both the prosecution and the departmental enquiry initiated pursuant to the proceedings dated 23.1.2003, is only the complaint by the petitioner's wife, the departmental enquiry ought not to have been simultaneously pursued.

Normatively, it is not as though the mere initiation of prosecution eclipses the jurisdiction, powers and authority of the employer to initiate disciplinary proceedings, if a case exists for initiation of such enquiry. The social purposes and justifications for a prosecution are distinct from those of an employer who seeks to initiate disciplinary proceedings against its employee, even if the employer be a public employer. The sanctions are distinct, the standard of proof is different and therefore the consistent principle of law in the area is that departmental proceedings and prosecution, as a rule, could be simultaneously held.

Be that as it may, as on date even according to the petitioner, there is no prosecution pending. The petitioner has been suspended by proceedings dated 9.1.2003 on the ground of his having been arrested and in custody for a period in excess of 48 hours and also since the conduct alleged against him constitutes misconduct under the applicable Regulations of the A.P. Genco, which have been adopted from the complimentary Regulations of the A.P.S.E.B.

This court finds no infirmity either in the order placing the petitioner under suspension or initiation and continuation of disciplinary proceedings. The petitioner

is at liberty to submit a representation to the employer bringing to the notice of the employer/disciplinary authority or the Inquiry Officer any developments which the petitioner feels are relevant, to the disciplinary enquiry. It is stated by the learned counsel for the petitioner that a representation has already been made on 28.7.2004, to the 2nd respondent who is the disciplinary authority. If that be so, the 2nd respondent shall consider the said representation and take an appropriate administrative decision in the matter.

Subject to the above, writ petition is dismissed. There shall however be no order as to costs.

GODA RAGHURAM, J

Date: 23.1.2006

cvm